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In the Supreme Court of the United States

JAMES OBERGEFELL, *et al.*, *Petitioners*,
v.
RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, *et al.*, *Respondents*.

VALERIA TANCO , *et al.*, *Petitioners*,
v.
BILL HASLAM, GOVERNOR OF TENNESSEE, *et al.*, *Respondents*.

APRIL DEBOER, *et al.*, *Petitioners*,
v.
RICK SNYDER, GOVERNOR OF MICHIGAN, *et al.*, *Respondents*.

GREGORY BOURKE, *et al.*, *Petitioners*,
v.
STEVE BESHEAR, GOVERNOR OF KENTUCKY, *et al.*, *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF AMICUS CURIAE INDIANA UNIVERSITY IN SUPPORT OF PETITIONERS

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Bowers v. Hardwick,
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City of Cleburne v. Cleburne Living Ctr.,
473 U.S. 432 (1985) 20, 21

DeBoer v. Snyder,
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Hollingsworth v. Perry,
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Kitchen v. Herbert,
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Latta v. Otter,
771 F.3d 456 (9th Cir. 2014) 26

Lawrence v. Texas,
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Loving v. Virginia,
388 U.S. 1 (1967) 27, 28

New York Times Co. v. Sullivan,
376 U.S. 254 (1964) 28

Romer v. Evans,
517 U.S. 620 (1996) 20, 21

SmithKline Beecham Corp. v. Abbott Labs.,
740 F.3d 471 (9th Cir. 2014) 22

U.S. Dep't of Agric. v. Moreno,
413 U.S. 528 (1973) 20, 21

United States v. Windsor,
133 S. Ct. 2675 (2013) ..... *passim*

Whitney v. California,
274 U.S. 357 (1927) 28

Williams v. North Carolina,
317 U.S. 287 (1942) 27

Constitution

Ind. Const. art. IX, § 2 (1816) 1

Mich. Const. art. I, § 25 25

U.S. Const. amend. XIV 19, 28

Other Authorities

Brief of American Companies as Amici Curiae in Support of Respondents, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (No. 12-144), 2013 WL 795548 17

Campus Pride, *Campus Pride releases 2014 Top 50 List of LGBT-friendly Colleges & Universities* (Apr. 15, 2014), http://www.campuspride.org/campus-pride-releases-2014-top-50-lgbt-friendly-list-highlighting-the-best-of-the-best-colleges-universities 14

Crosby Burns, *The Costly Business of Discrimination: The Economic Costs of Discrimination and the Financial Benefits of Gay and Transgender Equality in the Workplace*, Ctr. for Am. Progress (Mar. 22, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/lgbt_biz_discrimination.pdf 12, 19

Wesley Combs, *LGBT Inclusion & Diversity in the Workplace*, Diversity MBA Magazine (Aug. 22, 2012), http://diversitymbamagazine.com/lgbt-inclusion-diversity-in-the-workplace 13

Corporate Equity Index, Human Rights Campaign, http://www.hrc.org/campaigns/corporate-equality-index 16

Amy Davidson, *The Economic Closet: The Business Case for Gay Marriage*, The New Yorker (Feb. 27, 2013), *available at* www.newyorker.com/news/daily-comment/the-economic-closet-the-business-case-for-gay-marriage 17

Domestic Partner Coverage, Ind. Univ. Human Res., https://www.indiana.edu/~vpfaa/saahandbook/index.php/Equal_Employment_Opportunity_Policy 4

Domestic Partner Coverages, Ind. Univ. Human Res., http://www.indiana.edu/~uhrs/benefits/dp/dp.html 4

Julie Dorf, Mark Bromley, & Michael Guest, *Anchoring Equality: How U.S. Corporations Can Build Equal and Inclusive Global Workforces*, Council for Global Equality (Oct. 2009), *available at* http://www.globalequality.org/storage/documents/pdf/councilforglobalequalityreportfinal_lowres.pdf 17, 19

Employer Database, Human Rights Campaign, http://www.hrc.org/apps/cei/ 15

Gallup, Americas, *Most Americans Approve of Interracial Marriages* (Aug. 16, 2007), *available at* http://www.gallup.com/poll/28417/most-americans-approve-interracial-marriages.aspx . . 28

James Gwartney & Charles Hayworth, *Employer Costs and Discrimination: The Case of Baseball*, 82 J. of Pol. Econ. 873 (1974) 18

Hearing Before the Subcomm. on Health, Employment, Labor and Pensions, 110th Cong. (Sept. 5, 2007) (statement of Kelly Baker, V.P. Human Resources, General Mills, Inc.) 18

Ryan M. Hill & Jeremy W. Pettit, *Suicidal Ideation and Sexual Orientation in College Students: The Roles of Perceived Burdensomeness, Thwarted Belongingness, and Perceived Rejection Due to Sexual Orientation*, Am. Ass'n of Suicidology (2012) 15

H.J. Res. 3, 118th Gen. Assemb., 1st Reg. Sess. (Ind. 2013) 9

Laurel Holland, *et al. "That's So Gay!" Exploring College Students' Attitudes Toward the LGBT Population*, 60:4 J. of Homosexuality (2013) . . 14

Indiana University – Wikipedia, http://en.wikipedia.org/wiki/Indiana_University 2

Eric Love, *Diversity Education*, Ind. Univ., http://www.indiana.edu/~diversit 3

Nick Manes, *Inaction on LGBT equality stalls Michigan's talent efforts*, Mibiz (Jan. 4, 2015), http://mibiz.com/item/22108-inaction-on-lgbt-equality-stalls-michigan's-talent-efforts 16

Susan McPherson & Laura Clise, *Big Business Increasingly Supports Gay Rights*, Harv. Bus. Rev. (Sept. 28, 2012), https://hbr.org/2012/09/big-business-increasingly-supp 11, 13

Member Institutions and Years of Admission, Ass'n of Am. Univs., http://www.aau.edu/about/article.aspx?id=5476 12

Minutes of the Board of Trustees of Indiana University (Sept. 20, 2002) 4

Mission, Ind. Univ., http://www.iu.edu/about/mission.shtml 1, 2

Out and Equal Workplace Culture Report (2008) . 19

Policy Briefings, *IU general counsel testifies against proposed Indiana marriage amendment* (Jan. 14, 2014), http://viewpoints.iu.edu/policy-briefings/2014/01/14/iu-general-counsel-testifies-against-proposed-indiana-marriage-amendment/ 10

Press Release, *Indiana University joins Freedom Indiana in fight against constitutional amendment banning same-sex marriage* (Oct. 28, 2013), *available at* http://news.indiana.edu/releases/iu/university-wide/2013/10/iu-joins-freedom-indiana.shtml 9

Press Release, *IU Bloomington named one of top LGBT-friendly universities* (Apr. 15, 2014), *available at* http://news.indiana.edu/releases/iu/2014/08/LGBT-friendly-schools.shtml 14

Steve Sanders, *Symposium: Let's be clear—the marriage bans are about animus, SCOTUSblog*, (Jan. 16, 2015, 6:12 PM), http://www.scotusblog.com/2015/01/symposium-lets-be-clear-the-marriage-bans-are-about-animus 24

Brad Sears & Christy Mallory, *Economic Motives for Adopting LGBT Related Workplace Policies*, The Williams Institute (Oct. 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corporate-Statements-Oct-20111.pdf 16

Christine Silva and Anika K. Warren, *Building LGBT Inclusive Workplaces, Engaging Organizations and Individuals in Change*, CATALYST (2009) 19

Jacqueline Simmons, Vice President and General Counsel, Indiana University, Testimony Before the Indiana House of Representatives, Judiciary Committee (Jan. 13, 2014) 4, 10

What We Do: Academic Support & Retention, Ind. Univ. Office V.P. for Diversity, Equity, and Multicultural Affairs, http://www.indiana.edu/~dema/whatwedo/acad_support.shtml 2

What We Do: Administration & Culture, Ind. Univ. Office V.P. Diversity, Equity, and Multicultural Affairs, http://www.indiana.edu/~dema/whatwedo/admin_culture.shtml 3

Workplace Discrimination Laws and Policies, Human Rights Campaign, Human Rights Campaign, http://www.hrc.org/resources/entry/Workplace-Discrimination-Policies-Laws-and-Legislation 16

Statement of Interest of Amicus Curiae[1]

Indiana University, known in Indiana as "IU," was founded in 1820. The Indiana legislature created IU in response to a mandate in the 1816 Indiana Constitution to "provide, by law, for a general system of education" including "a state university."[2] IU now is a major, multi-campus public research institution with outstanding programs in the liberal arts and sciences; it also is a world leader in professional, medical, and technological education. IU's "mission is to provide broad access to undergraduate, graduate, and continuing education for students throughout Indiana, the United States, and the world, as well as outstanding academic and cultural programs and student services."[3]

Fulfilling this mission, IU has more than 110,000 students on eight campuses, the largest being in

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[1] Respondents have lodged blanket letters of consent to the filing of amicus briefs with the Clerk of the Court, and Petitioners have consented in writing to the filing of this brief in accordance with Supreme Court Rule 37.3. No counsel for a party authored the brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the amicus curiae, made a monetary contribution to this brief.

[2] Ind. Const. art. IX, § 2 (1816), *available at* http://www.in.gov/history/2874.htm.

[3] *Mission*, Ind. Univ., http://www.iu.edu/about/mission.shtml (last visited Feb. 26, 2015).

Bloomington (43,000) and Indianapolis (31,000);[4] most IU students are from Indiana. More than 8,700 faculty university-wide serve these students.[5] IU has many well-known programs, including music (Jacobs School of Music), business (Kelley School of Business), informatics and computing, medicine, optometry, public and environmental affairs, public health, nursing, dentistry, social work, education, and law.[6]

To maintain and enhance its educational quality and achieve its mission, IU "strives to achieve full diversity, and to maintain friendly, collegial, and humane environments, with a strong commitment to academic freedom."[7] To achieve this goal, IU provides academic support services to bolster a climate that encourages cultural, ethnic, and gender diversity.[8] It also provides services to students and the entire university community through its diversity education program; African American Arts Institute; Asian Culture Center; First Nations Educational & Cultural

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[4] *Indiana University – Wikipedia*, http://en.wikipedia.org/wiki/Indiana_University (last visited Feb. 26, 2015). The Indianapolis campus is called Indiana University-Purdue University Indianapolis and is administered by Indiana University.

[5] *Id.*

[6] *Id.*

[7] *Mission*, Ind. Univ., http://www.iu.edu/about/mission.shtml (last visited Feb. 26, 2015).

[8] *What We Do: Academic Support & Retention*, Ind. Univ. Office V.P. for Diversity, Equity, and Multicultural Affairs, http://www.indiana.edu/~dema/whatwedo/acad_support.shtml (last visited Feb. 26, 2015).

Center; Gay, Lesbian, Bisexual, Transgender Student Support Services; La Casa/Latino Cultural Center; Neal-Marshall Black Culture Center; and Neal-Marshall Black Culture Center Library.[9] These centers function as a resource to promote a campus climate emphasizing cultural awareness, understanding, and tolerance.[10]

These centers also embody IU's recognition that in today's society, students must have a set of multicultural competencies to compete in the job market and succeed in an increasingly diverse world. IU's programs promote cultural awareness and dialogue and seek to convey the knowledge, skills, and experience necessary for students and graduates to prosper in diverse workplaces.[11]

IU has become a leader in promoting tolerance, respect, and equality for gay, lesbian, bisexual, and transgender persons, including students, faculty, staff, and visitors. IU has included sexual orientation in its non-discrimination and Equal Employment Opportunity policies since 1992, and has included

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[9] *What We Do: Administration & Culture*, Ind. Univ. Office V.P. Diversity, Equity, and Multicultural Affairs, http://www.indiana.edu/~dema/whatwedo/admin_culture.shtml (last visited Feb. 26, 2015).

[10] *Id.*

[11] Eric Love, *Diversity Education*, Ind. Univ., http://www.indiana.edu/~diversit (last visited Feb. 26, 2015).

gender identity in those policies since 2009.[12] It also has included sexual orientation and gender identity or expression in its public written statements about diversity. Since April 2002, IU has offered domestic partner benefits after the Bloomington and Indianapolis faculties voted unanimously to do so.[13] IU employees are required to provide evidence of marriage or establish by affidavit and other documentation a mutual commitment constituting "the functional equivalent of a marriage" to obtain these benefits.[14]

IU's domestic partner benefits policy has helped the university attract and retain the best and brightest faculty and staff. Its policy not only directly affirms the value of gay, lesbian, bisexual, and transgender faculty and staff, it also is tangible affirmation of IU's commitment to diversity and inclusiveness that helps to attract and retain excellent faculty, staff, and students.

Summary of Argument

Same-sex marriage is the law in Indiana because a federal district court and the Seventh Circuit ruled

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[12] *Domestic Partner Coverage*, Ind. Univ. Human Res., https://www.indiana.edu/~vpfaa/saahandbook/index.php/Equal_Employment_Opportunity_Policy (last visited Feb. 27, 2015).

[13] Jacqueline Simmons, Vice President and General Counsel, Indiana University, Testimony Before the Indiana House of Representatives, Judiciary Committee (Jan. 13, 2014). Minutes of the Board of Trustees of Indiana University (Sept. 20, 2002).

[14] *Domestic Partner Coverages*, Ind. Univ. Human Res., http://www.indiana.edu/~uhrs/benefits/dp/dp.html (last visited Feb. 27, 2015).

that Indiana's statutory ban on same-sex marriage lacks rational basis. If the Court answers the questions presented in these cases now in the negative, Indiana law is likely to revert to prohibiting marriages between same-sex couples. This development would damage IU's efforts to make its academic environment welcoming to diverse students, faculty, and staff and has the potential to reverse IU's policies—such as extending health benefits to same-sex partners in committed relationships—that treat committed same-sex relationships equally with opposite-sex marriages. In contrast, IU's educational mission would be enhanced if the Court answered the questions affirmatively, allowing IU to continue to compete for top students, faculty, and staff.

As a world-class center for higher learning, IU participates in a global market for talent. IU's policies favoring diversity are not only the right thing to do, they also provide access to a larger talent pool and improve retention and job satisfaction for all employees, those who are lesbian, gay, bisexual, and transgender (LGBT) and those who are not. Equal treatment of same-sex couples is essential to attracting and retaining the diverse workforce IU needs to continue its status as an outstanding educational institution. The overwhelming majority of America's largest, most successful businesses stress diversity in their workforces and ensure equal treatment of LGBT employees; many of these businesses have supported litigation challenging same-sex marriage bans. These businesses, along with IU, understand that a diverse workforce generates creativity and innovation, which are vital to the success of enterprises as diverse as Microsoft, General Mills, and IU.

The state laws under review in this case violate the federal Constitution. The statutes embody moral disapproval of same-sex relationships, but they serve no legitimate purpose. Moral disapproval of a group—especially one with immutable traits—is insufficient without more to satisfy rational basis review. And, as decisions from the Fourth, Seventh, Ninth, and Tenth Circuits conclude, none of the states' proffered justifications for their bans withstand constitutional scrutiny.

Argument

IU submits this brief in support of the rights of its faculty, staff, and students. IU asks the Court for a decision that allows these individuals to live in dignity and with respect. IU asks that they be free from discrimination based on their personal relationships outside of the workplace. IU additionally asks the Court to honor the marriages into which its faculty, staff, and students have entered, and which have been recognized by the State of Indiana, other states, and relevant state and federal courts. And IU further asks the Court to recognize the equal dignity due the children of these unions, who should not be treated differently just because their parents are of the same gender.

I. Same-sex marriage currently is lawful in Indiana.

A. Indiana's statutory same-sex marriage ban violates equal protection.

Indiana's statute limiting marriage to one man and one woman was found unconstitutional in *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014), which rejected the

statute on equal protection grounds. In *Baskin*, the Seventh Circuit concluded that "Discrimination by a state ... against a minority, when based on an immutable characteristic of the members of that minority ... and occurring against an historical background of discrimination against the persons who have that characteristic, makes the discriminatory law or policy constitutionally suspect." *Id.* at 654. *Baskin* found that Indiana failed to show that its prohibition against same-sex marriages served any important governmental interest, while on the other hand the statutory prohibition deprived same-sex couples of dignity as well as substantial economic and legal benefits such as testimonial privilege, spousal-support obligations, various rights in divorce, and federal benefits including tax benefits, Social Security benefits, and veterans' benefits. *Id.* at 658. Indiana's prohibition also "humiliates tens of thousands of children now being raised by same-sex couples" by "mak[ing] it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.* at 659 (quoting *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013)).

The Seventh Circuit rejected Indiana's sole rationale for prohibiting same-sex marriage, which was "to try to channel unintentionally procreative sex into a legal regime in which the biological father is required to assume parental responsibility." *Id.* at 660. The court pointed out that Indiana has other ways to enforce this responsibility (such as child support laws) and that if this were in fact Indiana's rationale for marriage, marriage should be limited to fertile couples. *Id.* at 661. Moreover, if the purpose of marriage is to

protect children of unmarried parents, Indiana's law is vastly underinclusive because it does not include the great number of same-sex couples who adopt children. *Id.* at 663. The Seventh Circuit ruled that Indiana's prohibition against same-sex marriage failed the rational basis test and therefore violated the Equal Protection Clause. *Id.* at 665.

B. Answering "no" to the questions presented in this appeal could undo IU's progress toward equal treatment of all individuals.

If this Court answers the questions presented in this case in the negative, Indiana's statutory prohibition against same-sex marriage would be resurrected and IU would be placed at a disadvantage compared to institutions of higher learning in states that recognize same-sex marriage. That outcome would signal not only to same-sex couples, but to all others, that Indiana is "a very unwelcoming environment." *Id.*

This outcome could reverse IU's progress toward fostering a welcoming academic environment for diverse students, faculty, and staff. Indiana's laws would be subject to further litigation, possibly leading to reinstatement of the statute limiting marriage to one man and one woman that *Baskin* found unconstitutional. Indiana also would again enforce its prohibition against recognizing same-sex marriages performed in other states. This reversion to prior law would undo IU's longstanding record of treating committed same-sex relationships equally with opposite-sex marriages.

Negative answers to the questions presented in this case would re-open the door to the state constitutional amendment Indiana was considering at the time *Baskin* was decided. Before *Baskin*, IU was a key part of Freedom Indiana,[15] a coalition of businesses and educational institutions that opposed this proposed amendment, which not only would have constitutionalized the requirement that marriage be between one man and one woman, but would have prohibited any "legal status identical or substantially similar to that of marriage for unmarried individuals." *See* H.J. Res. 3, 118th Gen. Assemb., 1st Reg. Sess. (Ind. 2013). IU's President Michael McRobbie stated the following regarding the proposed constitutional amendment:

> [It] sends a powerfully negative message [to prospective employees] of Indiana as a place to live and work that is not welcoming to people of all backgrounds and beliefs. . . . As a major employer in the state, IU competes with universities and companies around the world for the very best talent, and [the proposed amendment] would needlessly complicate our efforts to attract employees to our campuses around the state.[16]

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[15] Press Release, *Indiana University joins Freedom Indiana in fight against constitutional amendment banning same-sex marriage* (Oct. 28, 2013), *available at* http://news.indiana.edu/releases/iu/university-wide/2013/10/iu-joins-freedom-indiana.shtml. More than 100 IU students, most of whom were straight, participated in the Freedom Indiana Campaign.

[16] *Id.*

IU's outside legal counsel advised that the University's domestic partner benefit program could be rendered unlawful by this amendment because the benefit program could be deemed to confer a legal status similar to marriage for same-sex couples.[17] In part because of this issue, IU's Vice President and General Counsel Jacqueline Simmons testified against the state constitutional amendment at a 2013 legislative hearing. She testified that the debate over the state constitutional amendment "is sending the wrong message to potential employees that Indiana does not welcome everyone. It's a message being heard, not only by the talented LGBT recruits, but also their families, their friends and a broad cross-section of our potential workforce and scholars."[18] IU took this stand on controversial legislation before the very legislative body that appropriates hundreds of millions of dollars for the University in each biennium.

More specifically, a negative answer to the second question in these cases could have an immediate negative effect. Many IU faculty and staff have been married in states with statutes or state constitutions that permitted same-sex marriage. A negative answer to the second question would allow Indiana to enforce its statute denying recognition to those marriages. Denial of recognition of these lawful marriages would create an immediate and strong incentive for these

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[17] Policy Briefings, *IU general counsel testifies against proposed Indiana marriage amendment* (Jan. 14, 2014), http://viewpoints.iu.edu/policy-briefings/2014/01/14/iu-general-counsel-testifies-against-proposed-indiana-marriage-amendment/.

[18] Simmons, *supra* note 13.

legally married faculty and staff to leave Indiana in favor of locations that recognize their marriages and do not stigmatize their children.

IU's educational mission would be enhanced if the Court answers "yes" to both questions presented in the cases under review. That outcome would allow IU to continue to be an academic work environment that welcomes everyone.

II. Marriage inequality impedes IU's educational mission.

IU's success as a world-class institution of higher learning depends on attracting and retaining the best talent, including faculty, staff, and students. "[W]ith LGBT employees making up 5-10% of the working population, companies neglecting to promote an inclusive culture will likely miss out on the opportunity to attract top talent from this segment of the workforce."[19] IU's policy favoring diversity not only provides access to a larger talent pool, it improves the retention and satisfaction of employees once they are hired. Employees who work for employers that discriminate are less able to focus their energy on performing their jobs, feel less valued, and experience negative job attributes such as higher rates of absenteeism and additional physical and mental health

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[19] Susan McPherson & Laura Clise, *Big Business Increasingly Supports Gay Rights*, Harv. Bus. Rev. (Sept. 28, 2012), https://hbr.org/2012/09/big-business-increasingly-supp.

problems.[20] These effects inhibit employees' job performance.[21]

IU's commitment to diversity also increases its access to the worldwide talent pool needed to hire the best faculty and staff. IU is a member of the elite Association of American Universities, made up of 62 of the top research universities in the U.S. and Canada. Most of these universities are in jurisdictions that would retain same-sex marriage even if this Court gave negative answers to the questions presented here, putting IU at a disadvantage in the market for top-notch faculty, staff, and students.[22] IU would also find itself disadvantaged when competing against other employers. When the Jacobs School of Music needs to fill the Hamlin Chair in Piano, it will participate in a global market for talent; the same is true when the IU School of Medicine needs to fill the Zipes Chair in Cardiology or the Kelley School of Business has to fill the Haeberle Chair in Entrepreneurship. IU must vie

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[20] Crosby Burns, *The Costly Business of Discrimination: The Economic Costs of Discrimination and the Financial Benefits of Gay and Transgender Equality in the Workplace*, Ctr. for Am. Progress (Mar. 22, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/lgbt_biz_discrimination.pdf.

[21] *Id.*

[22] *Member Institutions and Years of Admission*, Ass'n of Am. Univs., http://www.aau.edu/about/article.aspx?id=5476 (last visited Feb. 25, 2015). Thirty-two of the 62 AAU schools are in jurisdictions that have same-sex marriage under state constitutional provisions (Iowa, Massachusetts, New Jersey), state statutes (California, Connecticut, Illinois, Maryland, Minnesota, New York, Rhode Island, Washington) or national law (Canada).

for talent not merely with other universities, but with the orchestras, medical research start-ups, technology companies, and myriad other non-educational employers drawing on the same talent pools. IU wants to treat its faculty, staff, and students equally; and IU's leadership knows that fostering inclusion and diversity makes the University a stronger institution in multiple ways.

Equal treatment of same-sex couples is integral to attracting and retaining the diverse workforce IU desires. Survey data show that 83% of lesbian, gay, transgender, and transsexual persons believe it is important that their employer offer equal health insurance benefits to all employees, and 68% say they prefer a job with an employer in a state where same sex marriages are recognized.[23] Other creative workplaces recognize these facts. As Washington-based Microsoft has said about marriage equality, "As other states recognize marriage equality, Washington's employers are at a disadvantage if we cannot offer a similar, inclusive environment to our talented employees, our top recruits and their families."[24]

For educational institutions, a more diverse faculty also helps attract a more diverse group of undergraduate and graduate students. Today's students are looking for an environment of inclusion,

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[23] Wesley Combs, *LGBT Inclusion & Diversity in the Workplace*, Diversity MBA Magazine (Aug. 22, 2012), http://diversitymbamagazine.com/lgbt-inclusion-diversity-in-the-workplace.

[24] McPherson & Clise, *supra* note 19.

and a university's reputation as a LGBT-friendly place is enhanced if it is in a state with same-sex marriage. For example, a school with top-notch LGBT faculty is more likely to attract LGBT students when LGBT faculty may serve as mentors and when students feel more a part of an academic community that values them as individuals; the presence of "out" and supportive faculty and staff have been cited as critical to the success of LGBT students on a university campus.[25] IU's ability to attract diverse students has been enhanced by its recognition as a five-star rated campus in Campus Pride's LGBT-Friendly Campus Climate Index and its inclusion on Campus Pride's list of top 50 LGBT-friendly colleges and universities for 2014. These listings are based on policies, programs, and practices relating to LGBT students, faculty, and staff at more than 425 colleges and universities.[26]

IU's interest goes beyond promoting diversity. The University is doing more than just making widgets. Each year, IU serves as a gateway into the workforce for tens of thousands of its students. In this role as an educational institution preparing students for the

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[25] *See* Laurel Holland, *et al. "That's So Gay!" Exploring College Students' Attitudes Toward the LGBT Population*, 60:4 J. of Homosexuality 575-95 (2013).

[26] Campus Pride, *Campus Pride releases 2014 Top 50 List of LGBT-friendly Colleges & Universities* (Apr. 15, 2014), http://www.campuspride.org/campus-pride-releases-2014-top-50-lgbt-friendly-list-highlighting-the-best-of-the-best-colleges-universities; Press Release, *IU Bloomington named one of top LGBT-friendly universities* (Apr. 15, 2014), *available at* http://news.indiana.edu/releases/iu/2014/08/LGBT-friendly-schools.shtml.

future, IU has a special interest in ensuring a workplace that reflects both the diversity of its student body and the diversity students will encounter post-graduation. IU therefore strives to attract a diverse student body and to educate all students to have mutual tolerance and respect. Obstacles to diversity, including marriage inequality, threaten IU's progress toward its educational mission.[27]

Colleges and universities have responded. Sixty-one of the sixty-two Association of American Universities members affirmatively include sexual orientation in their anti-discrimination policies, and fifty-six affirmatively include gender identity.[28] Failure to accept diversity has a real effect. For example, when a sought-after candidate was considering a position at University of Michigan medical school, friends and colleagues encouraged the candidate, who is gay, to look elsewhere because "Michigan has a poor reputation within the lesbian, gay, bisexual and

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[27] By contrast, where gay, lesbian, and bisexual students perceive or anticipate rejection due to sexual orientation, these students show higher levels of believing they burden others and suicidal thoughts than heterosexual students. Ryan M. Hill & Jeremy W. Pettit, *Suicidal Ideation and Sexual Orientation in College Students: The Roles of Perceived Burdensomeness, Thwarted Belongingness, and Perceived Rejection Due to Sexual Orientation*, Am. Ass'n of Suicidology (2012).

[28] See Appendix A. The Human Rights Campaign website currently reports that of the top 120 colleges and universities ranked by U.S. News magazine, 108 include sexual orientation in their non-discrimination policies; 60 include gender identity in their non-discrimination policies; and 72 offer domestic partner health benefits. *Employer Database*, Human Rights Campaign, http://www.hrc.org/apps/cei/ (last visited Feb. 26, 2015).

transgendered (LGBT) community because of the state's ban on same-sex marriage and its lack of anti-discrimination protections."[29] Although that candidate accepted the position, he "knows of at least one other recruit who turned down an opportunity to work for the university—despite a competitive compensation package—because of Michigan's ban on same-sex marriage and the state's lack of comprehensive, equal protection laws for LGBT people."[30]

American businesses recognize the importance of diversity and inclusion. Of the Fortune 500 companies, 89% have non-discrimination policies that cover sexual-orientation, as do 96% of the Fortune 100.[31] Dozens of businesses have submitted *amicus* briefs in the circuits on the issues in this case, making the "business case"

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[29] Nick Manes, *Inaction on LGBT equality stalls Michigan's talent efforts*, Mibiz (Jan. 4, 2015), http://mibiz.com/item/22108-inaction-on-lgbt-equality-stalls-michigan's-talent-efforts

[30] *Id.*

[31] *See Corporate Equity Index*, Human Rights Campaign, http://www.hrc.org/campaigns/corporate-equality-index (last visited Feb. 26, 2015); Brad Sears & Christy Mallory, *Economic Motives for Adopting LGBT Related Workplace Policies*, The Williams Institute (Oct. 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corporate-Statements-Oct-20111.pdf; *Workplace Discrimination Laws and Policies, Human Rights Campaign*, Human Rights Campaign, http://www.hrc.org/resources/entry/Workplace-Discrimination-Policies-Laws-and-Legislation (last visited Feb. 26, 2015).

for diversity and same-sex marriage.[32] One brief pointed out that prohibitions against same-sex marriage "impede[] businesses from achieving the market's ideal of efficient operations—particularly in recruiting, hiring, and retaining talented people who are in the best position to operate at their highest capacity."[33] Similarly, dozens of America's largest companies have supported federal legislation, the Employment Non-Discrimination Act, designed to prohibit workplace discrimination based on sexual orientation.[34] General Mills testified before Congress that the proposal "is good for business and good for America. It will help businesses attract and retain top talent, . . . help provide a safe, comfortable and productive work environment, ... [and] help create a

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[32] Amy Davidson, *The Economic Closet: The Business Case for Gay Marriage*, The New Yorker (Feb. 27, 2013), *available at* www.newyorker.com/news/daily-comment/the-economic-closet-the-business-case-for-gay-marriage (describing briefs in *United States v. Windsor* and *Hollingsworth v. Perry* filed by companies that "range from Apple to Xerox, with everyone from Levi Strauss, Cisco, Morgan Stanley, Nike, and Panasonic in between").

[33] Brief of American Companies as Amici Curiae in Support of Respondents, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (No. 12-144), 2013 WL 795548 at *16.

[34] Julie Dorf, Mark Bromley, & Michael Guest, *Anchoring Equality: How U.S. Corporations Can Build Equal and Inclusive Global Workforces*, Council for Global Equality (Oct. 2009) at 9, *available at* http://www.globalequality.org/storage/documents/pdf/councilforglobalequalityreportfinal_lowres.pdf.

culture that fosters creativity and innovation that is vital to the success of all businesses."[35]

One well-known study that illustrates the effects of employment discrimination is the 1974 Gwartney and Haworth study of major league baseball.[36] For the years 1947 through 1956, the study compared the teams that drew upon a more diverse pool of athletes—that is, the teams that did not exclude African American players—with the teams that intentionally limited their diversity by excluding African Americans.[37] The study concluded that teams choosing not to discriminate had an advantage over those that segregated.[38] The non-discriminating teams were able to acquire higher-quality players, had higher attendance at their games, and won more games than the teams that excluded African American players.[39]

A workplace that welcomes LGBT employees is more productive for all employees. "Studies show that where LGBT diversity is recognized and respected in the workplace, the morale of employees improves across the board. In an LGBT-affirming business

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[35] Hearing Before the Subcomm. on Health, Employment, Labor and Pensions, 110th Cong. (Sept. 5, 2007) (statement of Kelly Baker, V.P. Human Resources, General Mills, Inc.).

[36] James Gwartney & Charles Hayworth, *Employer Costs and Discrimination: The Case of Baseball*, 82 J. of Pol. Econ. 873, 874 (1974).

[37] *Id.* at 875.

[38] *Id.* at 876.

[39] *Id.* at 880.

environment, even non-LGBT employees tend to feel more accepted, thereby reducing stress and increasing morale and productivity."[40] Many talented technical workers, designers, and managers actively seek employment with companies that promote diverse and LGBT-inclusive corporate images, regardless of their own sexual orientations.[41] "A diverse workforce breeds innovation and creativity and promotes effective problem solving among groups of employees."[42]

III. State laws banning same-sex marriage violate the Equal Protection Clause of the Fourteenth Amendment.

The state laws under review (and others like them) are not merely at odds with IU's commitment to promoting respect for gay, lesbian, bisexual, and transgender persons, they also violate the U.S. Constitution. As this Court's decision in *United States v. Windsor* makes clear, laws denying same-sex couples the right to marry are candid declarations of moral disapproval. 133 S. Ct. 2675, 2693-95 (2013). There can "hardly be more palpable discrimination against a class

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[40] Dorf, *supra* note 34 at 9 (citing Christine Silva and Anika K. Warren, *Building LGBT Inclusive Workplaces, Engaging Organizations and Individuals in Change*, CATALYST (2009)).

[41] *Id.* at note 10 (citing Out and Equal Workplace Culture Report (2008) stating that 63% of heterosexual respondents to survey reported it was "extremely" or "very important" to work for a company that offers equal health insurance to all employees and 49% reported that it was "extremely" or "very important" to work for a company that includes sexual orientation in its non-discrimination policy).

[42] Burns, *supra* note 20, at 30.

than making the conduct that defines the class criminal." *Romer v. Evans*, 517 U.S. 620, 641 (1996) (Scalia, J., dissenting) (internal citation and quotation marks omitted). Yet laws excluding that conduct—and therefore that class—from the fundamental dignity of marriage cannot be far behind. Serving no legitimate purpose, they violate the Equal Protection Clause.

A. Moral disapproval of an unpopular group is not a legitimate government interest for purposes of rational basis review under the Equal Protection Clause.

The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Legislation ordinarily is "presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440. But even under rational basis review, the "bare ... desire to harm a politically unpopular group" is not a legitimate state interest. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *see also Romer*, 517 U.S. at 632; *Cleburne*, 473 U.S. at 446-447.

Nor is "moral disapproval" of a group (much less one defined by immutable traits) by itself an interest sufficient "to satisfy rational basis review under the Equal Protection Clause." *Lawrence v. Texas*, 539 U.S. 558, 582 (2003) (O'Connor, J., concurring); *see also Romer*, 517 U.S. at 634-635; *Moreno*, 413 U.S. at 534. Applying rational basis review, this Court has repeatedly struck down classifications explicable only as efforts to harm or demean unpopular groups. A

classification failed rational basis review, for example, when no legitimate reason explained why the government would deny food stamps to people living in households including an unrelated person (*i.e.*, presumed "hippies") (*Moreno*, 413 U.S. at 534); or why a city required a special use permit for residences if they house people with mental disabilities (*Cleburne*, 473 U.S. at 450); or why a State would impose a constitutional ban on laws barring discrimination against gay and lesbian people (*Romer*, 517 U.S. at 632). And most recently, no rational basis was found for denying federal recognition to same-sex marriages but not to all other state-recognized marriages (*Windsor*, 133 S. Ct. at 2695-96).

Far from supporting classifications under rational basis review, bare moral disapproval of unpopular groups impugns them. The very point of "requiring that the classification bear a rational relationship to an independent and legitimate legislative end [is to] ensure that classifications are *not drawn for the purpose of disadvantaging the group burdened by the law*." *Romer*, 517 U.S. at 633 (emphasis added).

B. Laws denying same-sex couples the right to marry are candid declarations of moral disapproval, as *United States v. Windsor* recognized.

Even if reviewed merely for a rational basis, laws that deny gay and lesbian persons the right to marry an unmarried adult of their choice do not survive. *See, e.g.*, *Baskin*, 766 F.3d at 665 (holding that "Indiana's

ban flunks this undemanding test").[43] Rather, these laws are candid declarations of moral disapproval. They declare that same-sex couples are unworthy of the "dignity and status of immense import" given to heterosexual couples through marriage. *See Windsor*, 133 S. Ct. at 2692; *see also Baskin*, 766 F.3d at 659. They declare the lawful conduct of same-sex couples unworthy of lawful status, thus "undermin[ing] both the public and private significance of" same-sex relationships. *Windsor*, 133 S. Ct. at 2694. And they "tell[] those couples, and all the world, that their [relationships] are unworthy of [legal] recognition"—placing "same-sex couples in . . . second-tier" relationships that "demean[] the couple, whose moral and sexual choices the Constitution protects." *Id.* (internal citations omitted); *see also Lawrence*, 539 U.S. at 578 (striking down law criminalizing same-sex sodomy as demeaning gay and lesbian people "by making their private sexual conduct a crime"). Having thus broadcast their intent to demean, these laws make good on that purpose by burdening same-sex couples with a sweeping array of legal and economic

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[43] The Seventh Circuit and Ninth Circuits have correctly concluded that "more than a reasonable basis is required because this is a case in which the challenged discrimination is . . . against a minority, . . . based on an immutable characteristic of the members of that minority, . . . and occurring against an historical background of discrimination against the persons who have that characteristic, mak[ing] the discriminatory law or policy constitutionally suspect." *Baskin*, 766 F.3d at 654; *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 483 (9th Cir. 2014) (finding laws that discriminate based on sexual orientation are subject to heightened scrutiny). But as the Seventh Circuit ruled in *Baskin*, state laws banning same-sex marriage "flunk" even rational basis review. *Baskin*, 766 F.3d at 665.

disabilities, under both state and federal law, *not* suffered by their opposite-sex counterparts.

This is invidious discrimination—illegitimate and unlawful—as this Court recognized when it decided *Windsor*. Confronting a statute attaching these very declarations and disabilities to same-sex marriages, *Windsor* found a "principal purpose" and "necessary effect" to demean. *Windsor*, 133 S. Ct. at 2695. And it found a violation of "basic due process and equal protection principles applicable to the Federal Government." *Id.* at 2693 (striking down the federal Defense of Marriage Act that denied federal marriage benefits to same-sex couples married under state law). The Constitution's guarantee of equality, the Court explained, "must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot" justify disparate treatment of that group. *Id.* (internal quotations omitted). Neither less apparent nor more legitimate here, the bare intent to demean same-sex couples "whose moral and sexual choices the Constitution protects" cannot justify discrimination in these cases. *Id.* at 2694.

Nor, contrary to the Sixth Circuit's suggestion, can *Windsor* be confined to its federalist precepts. Upholding laws limiting marriage to couples of different genders, the Sixth Circuit read *Windsor* to invalidate the Defense of Marriage Act merely as an intrusion of federal power into matters of state sovereignty. *DeBoer v. Snyder*, 772 F.3d 388, 413-16 (6th Cir. 2014). It was that anomalous intrusion, the court reasoned, that raised the suspicion that "bigotry rather than legitimate policy [was] afoot." *Id.* at 414. *Windsor's* suspicions, however, were *proved* by the text

and history of the statutes at issue, which demonstrate an essential purpose to "interfere[] with the equal dignity of same-sex marriages." *Windsor*, 133 S. Ct. at 2693 (quoting House Report finding it "both appropriate and necessary for Congress to do what it can to defend the institution of traditional heterosexual marriage"); *see also Lawrence*, 539 U.S. at 601 (Scalia, J., dissenting) ("'preserving the traditional institution of marriage' is just a kinder way of describing the State's *moral disapproval* of same-sex couples" (emphasis in original)). Declaring an unmistakable intent to demean, the text and history of state laws limiting marriage to heterosexual couples equally establish an illegitimate purpose here.[44]

C. That states and courts cannot identify a legitimate reason to exclude gay and lesbian couples from marriage strongly suggests none exists.

The laws of Ohio, Tennessee, Kentucky, and Michigan (like the law of Indiana before them) are brought into irreconcilable conflict with the

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[44] Not just the text but also the history of these laws confirms their illegitimate purpose. Between 1996 and 2012, more than thirty-one states amended their constitutions, while others (like Indiana) passed statutes to define marriage as between one man and one woman. *See* Steve Sanders, *Symposium: Let's be clear—the marriage bans are about animus, SCOTUSblog*, (Jan. 16, 2015, 6:12 PM), http://www.scotusblog.com/2015/01/symposium-lets-be-clear-the-marriage-bans-are-about-animus (author is a professor at IU Maurer School of Law). The often-expressed intent of these laws was to preserve the traditional institution of marriage, just as Congress expressly acted to defend traditional (*i.e.*, heterosexual) marriage when it enacted DOMA. *Id.*

Constitution not just by their illegitimate purpose to demean, but also by a resounding failure to advance any legitimate government interest.

In the absence of a legitimate purpose, singling out same-sex couples for special treatment in itself conveys animus. Failure to give same-sex couples the same benefits as opposite-sex couples is a statement that same-sex couples are less worthy; different treatment bespeaks stigma and lower status. As the Michigan Constitution puts it, "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose" in order "[t]o secure and preserve the benefits of marriage for our society and for future generations of children." Mich. Const. art. I, § 25. In other words, same-sex marriage or any "similar union," presumably civil unions, cannot be permitted; if they are permitted, "our society and ... future generations of children" will be deprived of the benefits of marriage. The very language of the legal provision at issue conveys the stigma and illustrates the animus.

Years of litigation in many circuits have failed to disclose any legitimate government interest that could plausibly explain why same-sex couples should be denied the right to marry. The Seventh Circuit, for example, rejected Indiana's and Wisconsin's reasons for their "discriminatory policies"—whether relating to child welfare or the supposed need to gather more information—as not just "conjectural" but "totally implausible." *Baskin*, 766 F.3d at 671. The Fourth, Ninth, and Tenth Circuits have rejected still more proposed rationales, preferences for gender-specific parenting roles among them, with descriptions ranging

from illegitimate to "wholly illogical." *See, e.g.*, *Latta v. Otter*, 771 F.3d 456, 470 (9th Cir. 2014); *Kitchen v. Herbert*, 755 F.3d 1193, 1223 (10th Cir. 2014). And in dismissing reason after reason, these courts together raise the question Justice Scalia asked more than ten years ago: if moral disapprobation is not a legitimate state interest, "what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising the liberty protected by the Constitution?" *Lawrence*, 539 U.S. at 605 (Scalia, J., dissenting) (internal quotation omitted).

Nor does the Sixth Circuit—the only appellate court to credit state rationales—provide an adequate answer. Most notably, the opinion below invokes tradition, state authority to regulate marriage, and the democratic process as legitimate grounds for discriminating against same-sex couples. But these reasons fail on a larger scale. Tradition already has proved an inadequate ground to limit the Constitution's guarantee of equal protection. *Lawrence*, 539 U.S. at 577 ("the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice." (quoting *Bowers v. Hardwick*, 478 U.S. 186, 216 (1986) (Stevens, J., dissenting))). And as *Baskin* explains, the tradition of excluding same-sex couples from marriage is part of a greater tradition of discriminating against people who are lesbian or gay: "until quite recently homosexuality was anathematized by ... the vast majority of the American people...Homosexuals had, as homosexuals, no rights; homosexual sex was criminal (though rarely prosecuted); homosexuals were formally banned from the armed forces and many other types of government

work (though again enforcement was sporadic); and there were no laws prohibiting employment discrimination against homosexuals." *Baskin*, 766 F.3d at 665. Tradition would be a peculiar reason to withhold constitutional protection because tradition is so often what unconstitutionally oppressed groups seek protection from.

The Sixth Circuit also credits the state's traditional authority to regulate marriage—suggesting that federalism permits states to act as "laboratories of experimentation." *DeBoer*, 772 F.3d at 406. But no one disputes a State's authority to define marriage as "the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'" *Windsor*, 133 S. Ct. at 2691 (quoting *Williams v. North Carolina*, 317 U.S. 287, 298 (1942)). The question is whether states can define marriage (experimentally or otherwise) to exclude same-sex couples if that exclusion violates the Equal Protection Clause. And the answer—repeatedly given by this Court—is they cannot. *See, e.g.*, *Windsor*, 133 S. Ct. at 2691 ("State laws defining and regulating marriage, of course, must respect the constitutional rights of persons." (citing *Loving v. Virginia*, 388 U.S. 1 (1967))).

Nor, as the Sixth Circuit finally insists, does our constitutional democracy consign close questions to majority opinion. Deferring to the democratic process, the court declined to substitute the opinions of "life-tenured judges" for those of elected legislatures. *DeBoer*, 772 F.3d at 408. But this "humility" abandons a principal purpose of the Constitution: to protect

minorities from the tyranny of unfettered majority rule. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) ("Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed." (quoting *Whitney v. California*, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring))). This Court has not hesitated to strike down statutes that violate individual rights protected by the Fourteenth Amendment even when those laws are supported by state or national majorities. *See, e.g.*, *Loving*, 388 U.S. at 12 (striking down state miscegenation statutes as violating the equal protection and due process clauses of the Fourteenth Amendment); *see also* Gallup, Americas, *Most Americans Approve of Interracial Marriages* (Aug. 16, 2007), *available at* http://www.gallup.com/poll/28417/most-americans-approve-interracial-marriages.aspx (finding that 73% of Americans polled in 1968, one year after *Loving*, disapproved of interracial marriage). And regardless of whether the majorities of voters in Indiana and other states ultimately come to see same-sex couples as worthy of equal dignity, the intervening "wait and see" will do untold damage—including damage to the faculty, staff, and students of IU and to the University itself. "A Burkean sense of caution does not violate the Fourteenth Amendment," *DeBoer*, 772 F.3d at 406, but the denial of fundamental rights to gay and lesbian people does.

In sum, laws banning same-sex marriage palpably discriminate against and demean a class of gay and lesbian people. Supported by no legitimate purpose, the laws under review violate the Equal Protection Clause.

Conclusion

This Court should reverse the Sixth Circuit's judgment.

Respectfully submitted,

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APPENDIX

APPENDIX

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Appendix A List of Association of American Universities with Policies Covering Sexual Orientation and Gender Identity . . . . . App. 1

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
Boston University	Yes	Yes	http://www.bu.edu/eoo/policies-procedures/equal-opportunity/ (Feb. 18, 2015)
Brandeis University	Yes	Yes	http://www.brandeis.edu/studentaffairs/srcs/rr/index.html (Feb. 19, 2015)
Brown University	Yes	Yes	http://www.brown.edu/about/administration/policies/corporation-statement-nondiscrimination (Feb. 19, 2015)
California Institute of Technology	Yes	Yes	http://hr.caltech.edu/services/policies (Feb. 23, 2015)
Carnegie Mellon University	Yes	Yes	http://www.cmu.edu/student-affairs/theword/comm_standards/non-discrimination.html (Feb. 26, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
Case Western Reserve University	Yes	Yes	http://www.case.edu/finadmin/humres/policies/standards/aa_eeo.html (Feb. 23, 2015)
Columbia University	Yes	No	http://eoaa.columbia.edu/notice%20of%20non-discrimination (Feb. 23, 2015)
Cornell University	Yes	Yes	https://www.hr.cornell.edu/diversity/eeeo/statement.html (Feb. 23, 2015)
Duke University	Yes	Yes	https://web.duke.edu/equity/resources/documents/nondiscrimination_statement.pdf (Feb. 26, 2015)
Emory University	Yes	Yes	http://communications.emory.edu/tools/style-guide/emory.html (Feb. 26, 2015)
Georgia Institute of Technology	Yes	Yes	http://dev2014facultyhandbook.gatech.edu/policy-nondiscrimination-and-affirmative-action (Feb. 26, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
Harvard University	Yes	Yes	http://diversity.harvard.edu/pages/statement-equal-opportunity-laws-and-policies (Feb. 24, 2015)
Indiana University	Yes	Yes	http://trustees.iu.edu/resources/non-discrimination-policy.shtml (Feb. 24, 2015)
Iowa State University	Yes	Yes	http://www.eoc.iastate.edu/ (Feb. 24, 2015)
The Johns Hopkins University	Yes	Yes	https://portalcontent.johnshopkins.edu/carey/student-services/university-and-school-policies/nondiscrimination-policy.html (Feb. 26, 2015)
Massachusetts Institute of Technology	Yes	Yes	http://web.mit.edu/referencepubs/nondiscrimination/# (Feb. 26, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
McGill University	Yes	Yes	https://secureweb.mcgill.ca/secretariat/policies/hr/harassmentsexualharassment (Feb. 26, 2015)
Michigan State University	Yes	Yes	http://www.inclusion.msu.edu/equity/UniversityPolicies.html (Feb. 24, 2015)
New York University	Yes	Yes	http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/affirmative-actionequal-opportunity-policy.html (Feb. 24, 2015)
Northwestern University	Yes	Yes	http://www.northwestern.edu/hr/equlopp-access/equal-employment-opportunity/nondiscrimination.html (Feb. 24, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity[1]	URL to University/Date Visited
The Ohio State University	Yes	Yes	http://policies.osu.edu/policies/affirmative-action-equal-employment-opportunity-non-discriminationharassment-1.10.html (Feb. 24, 2015)
The Pennsylvania State University	Yes	Yes	https://guru.psu.edu/policies/AD85.html (Feb. 24, 2015)
Princeton University	Yes	Yes	http://policy.princeton.edu/policy-categories/non-discrimination (Feb. 24, 2015)
Purdue University	Yes	Yes	http://www.purdue.edu/purdue/ea_eou_statement.html (Feb. 24, 2015)
Rice University	Yes	Yes	http://professor.rice.edu/IndependentPage.aspx?id=291 (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
Rutgers, The State University of New Jersey	Yes	Yes	http://policies.rutgers.edu/view-policies/alphabetical-list#E (Feb. 25, 2015)
Stanford University	Yes	Yes	http://studentaffairs.stanford.edu/non-discrimination-policy (Feb. 25, 2015)
Stony Brook University-The State University of New York	Yes	No	http://www.stonybrook.edu/diversity/ (Feb. 25, 2015)
Texas A&M University	Aspirational	Aspirational	http://search.tamu.edu/index.html?q=non discrimination&search_items=TAMU (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
Tulane University	Yes	No	http://tulane.edu/search-results2.cfm?cx=017967096760080950669%3Abl9vlsogwoo&cof=FORID%3A11&q=nondiscrimination&as_sitesearch=tulane.edu%2F&as_dt=&siteURL=tulane.edu%2F&sa=Search (Feb. 25, 2015)
The University of Arizona	Yes	Yes	http://policy.arizona.edu/policy-index (Feb. 25, 2015)
University at Buffalo, The State University of New York	Yes	Yes	http://advising.buffalo.edu/legal/non-discrimination.php (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
University of California, Berkeley	Yes	Yes	http://ophd.berkeley.edu/policies-procedures/nondiscrimination?Refresh=0.390742228816 (Feb. 25, 2015)
University of California, Davis	Yes	Yes	http://catalog.ucdavis.edu/appendix/nondesc.html (Feb. 25, 2015)
University of California, Irvine	Yes	Yes	http://unex.uci.edu/services/legal/nondiscrim/ (Feb. 25, 2015)
University of California, Los Angeles	Yes	Yes	https://www.uclaextension.edu/pages/str/NondiscriminationPolicy.aspx (Feb. 25, 2015)
University of California, San Diego	Yes	Yes	http://www.ucsd.edu/catalog/front/shpp.html (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
University of California, Santa Barbara	Yes	Yes	http://my.sa.ucsb.edu/catalog/2013-2014/equalop.aspx (Feb. 25, 2015)
The University of Chicago	Yes	Yes	https://collegeadmissions.uchicago.edu/legal-nondiscrimination (Feb. 25, 2015)
University of Colorado Boulder	Yes	Yes	http://ucommunications.colorado.edu/services/style-guide/nondiscrimination-statements (Feb. 25, 2015)
University of Florida	Yes	Yes	http://search.ufl.edu/web/#gsc.tab=0&gsc.q=nondiscrimination (Feb. 25, 2015)
University of Illinois at Urbana-Champaign	Yes	Yes	https://www.hr.uillinois.edu/cms/One.aspx?portalId=4292&pageId=5670 (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
The University of Iowa (1909)	Yes	Yes	http://www.uiowa.edu/~our/opmanual/ii/06.htm (Feb. 25, 2015)
The University of Kansas	Yes	Yes	http://policy.ku.edu/IQA/nondiscrimination (Feb. 25, 2015)
University of Maryland, College Park	Yes	Yes	http://www.president.umd.edu/policies/ (Feb. 25, 2015)
University of Michigan	Yes	Yes	http://www.hr.umich.edu/oie/ndpolicy.html (Feb. 25, 2015)
University of Minnesota, Twin Cities	Yes	Yes	http://regents.umn.edu/policies/index (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
University of Missouri-Columbia	Yes	Yes	http://identity.missouri.edu/policies-guidelines/nondiscrimination.php (Feb. 25, 2015)
The University of North Carolina at Chapel Hill	Yes	Yes	http://policies.unc.edu/policies/student-org-dondiscrim/ (Feb. 25, 2015)
University of Oregon	Yes	Yes	http://aaeo.uoregon.edu/affirmative-action-plans (Feb. 25, 2015)
University of Pennsylvania	Yes	Yes	http://www.upenn.edu/almanac/volumes/v55/n18/aapolicy.html (Feb. 25, 2015)
University of Pittsburgh	Yes	Yes	https://www.cfo.pitt.edu/policies/policy/07/07-01-03.html (Feb. 25, 2015)
University of Rochester	Yes	Yes	http://www.rochester.edu/diversity/nondiscrimination.html (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
University of Southern California	Yes	No	http://catalogue.usc.edu/about-catalogue/nondiscrimination-policy/ (Feb. 25, 2015)
The University of Texas at Austin	Yes	Yes	https://www.policies.utexas.edu/policies/nondiscrimination-policy (Feb. 25, 2015)
University of Toronto	Yes	Yes	http://www.governingcouncil.utoronto.ca/policies/hrights.htm (Feb. 25, 2015)
University of Virginia	Yes	Yes	https://policy.itc.virginia.edu/policy/policydisplay?id=HRM-009 (Feb. 25, 2015)
University of Washington	Yes	Yes	http://www.washington.edu/admin/rules/policies/PO/EO31.html (Feb. 25, 2015)

Member Institution	Covers Sexual Orientation	Covers Gender Identity	URL to University/Date Visited
The University of Wisconsin-Madison	Yes	No	http://www.wisc.edu/policies/aaeo.php (Feb. 25, 2015)
Vanderbilt University	Yes	Yes	http://www.vanderbilt.edu/student_handbook/university-policies-and-regulations/#equal-opportunity (Feb. 25, 2015)
Washington University in St. Louis	Yes	Yes	http://hr.wustl.edu/policies/Pages/Non-DiscriminationStatement.aspx (Feb. 25, 2015)
Yale University	Yes	Yes	http://www.yale.edu/equalopportunity/policies/ (Feb. 25, 2015)